

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

A.O.A., et al.)
Plaintiff,)
)
vs.) No. 4:11-CV-00044-CDP
)
DOE RUN RESOURCES CORPORATION, et al.)
Defendant,)

FOURTH REPORT AND RECOMMENDATIONS OF SUBSTITUTE SPECIAL MASTER

Pursuant to the Court's Order Appointing Substitute Special Master in Re Privilege Log Disputes of May 29, 2018, the substitute Special Master reports and makes the following findings and recommendations:

1. On September 10, 2018 I received correspondence from Doe Run Resources Corporation (DRRC) in response to the August 2, 2018 correspondence of Plaintiff's original 94 challenges to privilege log designations. Of those 94 challenges, Doc. 1302 was previously submitted and for in camera review and found privileged. No challenge was made to the finding. DRRC also withdrew its claim of privilege to 16 of the 94 documents challenged. I, therefore, received a binder with 77 documents, which Plaintiffs challenge the designation of privilege. I have reviewed the legal arguments contained in both correspondences, and the submitted 77 documents, and make the following findings. All abbreviations remain the same as they have been in prior Orders.

2. Binder received September 10, 2018 entitled "DRRC IN Camera Submission to Special Master, September 10, 2018:

Log #0001 - AC
Log #0008 - AC
Log #0016 - AC
Log #0017 - AC
Log #0021 - Not AC
Log #0023 - AC
Log #0024 - AC
Log #0025 - AC
Log #0026 - AC
Log #0046 - AC
Log #0053 - Not AC
Log #0054 - First page not AC, second page AC, third, fourth and fifth pages not AC.
Log #0057 - AC
Log #0061 - Not AC
Log #0063 - AC
Log #0070 - Not in binder
Log #0089 - Not AC
Log #0092 - Not AC
Log #0100 - AC
Log #0109 - Not in binder

Log #0118 - Not AC
Log #0119 - Not WP
Log #0120 - First page not AC, remainder AC
Log #0121 - AC
Log #0182 - In Spanish, but defendants to provide further information as to identification of maker
Log #0189 - Not in binder
Log #0212 - Not in binder
Log #0227 - Not WP
Log #0240 - First page not AC; second and third page AC, Fourth page not AC, unable to determine what fifth page is, defendants to provide further information as to author and date.
Log #0242 - Not in binder
Log #0245 - Not in binder
Log #0246 - AC
Log #0248 - Not in binder
Log #0255 - AC
Log #0256 - Not AC
Log #0267 - Defendant may redact all handwritten notes and notations as AC, remainder not AC
Log #0273 - Defendant may redact proposed lines on page one as AC, remainder not AC
Log #0276 - AC
Log #0284 - AC
Log #0296 - Defendant may redact proposed lines on page one as AC, remainder not AC
Log #0301 - AC
Log #0359 - Defendant may redact sections entitled "Follow-up Action Required", remainder not AC
Log #0361 - AC
Log #0367 - Defendants may redact section entitled "Outlook and Prospects for the Future" on pages 3 & 4, remainder not AC
Log #0368 - AC
Log #0371 - AC
Log #0382 - AC
Log #0386 - AC
Log #0388 - AC
Log #0391 - AC
Log #0393 - AC
Log #0405 - Not AC
Log #0410 - Not AC
Log #0414 - AC
Log #0424 - AC
Log #0425 - AC
Log #0427 - AC
Log #0429 - AC
Log #0453 - Defendant may redact everything on page 1 after the first line as AC, Defendants may redact Sections 5, 6 and 7 as AC for the remainder, not AC
Log #0490 - AC
Log #0492 - Not AC
Log #0493 - Not AC
Log #0495 - AC
Log #0496 - AC

Log #0505 - Not in binder
Log #0516 - AC
Log #0529 - Not in binder
Log #0554 - Not in binder
Log #0568 - Not in binder
Log #0570 - Not in binder
Log #0577 - AC
Log #0625 - AC
Log #0626 - AC
Log #0629 - Not AC
Log #0651 - Not in binder
Log #0656 - AC
Log #0689 - AC
Log #0691 - Not in binder
Log #0830 - Not AC
Log #0877 - AC
Log #1118 - Not in binder
Log #1302 - Not in binder
Log #1436 - AC
Log #2160 - Unable to make a finding about WP without date, defendant to provide if it maintains the privilege

Log #2194 - Unclear if defendant is claiming WP only as to the highlighted section, need date to determine WP claim

Log #2242 - Not WP
Log #2258 - Not WP
Log #2261 - Not WP
Log #2296 - Not WP
Log #2315 - Based upon preparation in 2012, WP.

Log #2712 - Defendants to provide information this document was prepared by an attorney to claim WP

Log #3279 - Not WP
Log #3974 - Not WP
Log #6799 - AC

3. In the first Order (July 11, 1918), findings were deferred awaiting further argument as to accountant-client privilege. The parties have completed further argument, and Defendants no longer assert the privilege as accountant-client, but the attorney-auditor communications are privileged as work product. The rulings, previously deferred, are as follows:

From the first Order:

Doc #0275 - Not WP
Doc #0293 - Not WP
Doc #0299 - Not WP
Doc #0300 - Not WP

4. It is requested the additional information requested, not including translation from Spanish to English, be supplied by Defendant in 14 days.

5. It is requested to the Court that Defendants, within 14 days of this recommendation, produce and deliver to Plaintiffs all of the documents set forth herein which are determined not to be privileged, subject to the Protective Order in Effect.

Dated: October 16, 2018

/s/ Barbara Wallace

Honorable Barbara Wallace
Special Master
MBEN 27589

SO ORDERED:

DATED:

Catherine D. Perry
United States District Judge